



August 31, 2000

Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
Attorneys and Counselors
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR2000-3389

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138580.

The Mathis Independent School District (the “district”), which you represent, received a request for a copy of the “Climate Survey” conducted at Weber Elementary during the 1999-2000 school year. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.111 of the Government Code.¹ You have submitted the responsive information for our review. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing your claim under section 552.111 of the Government Code. Section 552.111 excepts “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in

¹You assert that the information is excepted from public disclosure pursuant to Government Code section 552.102. However, you have neither submitted arguments pertaining to this exception nor explained its applicability to the information at issue. Thus, in accordance with Government Code sections 552.301(e)(1)(A) and 552.302, we consider the exception waived.

light of the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters because disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See* Open Records Decision No. 615 at 5 (1993). Additionally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See id.*

The submitted information includes a memorandum pertaining to a "climate study." You explain that the memorandum pertains to a study conducted at Weber Elementary by a district consultant. You state that the memorandum "discusses not only the climate at the school, but also what the staff feels is contributing to the climate." We agree that the memorandum relates to the district's policymaking functions. *See* Open Records Decision No. 631 (1995). We have previously held, however, that similar information reflecting the compilation of a survey's results was not protected by section 552.111. That conclusion was based on the fact that the compiled results of a survey were not part of the decisional process. *See* Open Records Decision Nos. 464 at 4 (1987) (compiled survey responses to the declarative statements released), 209 at 3 (1978). Likewise, the resulting responses given in this study appear to be informational and provide the basis upon which conclusions may be drawn or decisions made. *See* Open Records Decision Nos. 419 at 4 (1984) (statistical summaries of opinion survey results are not excepted from section 552.111), 209 at 3 (1978). Consequently, in this instance, we find that the memorandum's conclusion may be withheld under section 552.111 as that information consists of advice, recommendations, and opinions. The remaining information contained in the memorandum, which consists of the compiled results of staff responses, is not protected by section 552.111. The remaining submitted information is purely factual in nature and, thus, is also not excepted under section 552.111.

You also claim that the submitted information is excepted from public disclosure pursuant to Government Code section 552.101 in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996).

You state that the submitted information questions the climate of the school, but the answers received also evaluate the effect of the school principal. We disagree that the information

constitutes an evaluation. Although a portion of the staff responses pertain to the principal, the questions asked of the staff cannot be categorized or perceived of as an evaluation of the performance of the principal or any other district teacher or administrator. Thus, we conclude that the information is not excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code.

In summary, you may withhold the information we have marked pursuant to Government Code section 552.111. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.


This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Reagan Watson", with a long horizontal flourish extending to the right.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138580

Encl. Submitted documents

cc: Mr. Charles Sullivan/Editor
Mathis News
San Patricio Publishing Co., Inc.
620 East San Patricio Avenue
Mathis, Texas 78368
(w/o enclosures)